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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RICHARD J. CURASI, individually)	Case No.: CV 11-2620 (JS) (AKT)
and on behalf of all those similarly)	
situated.)	[CLASS ACTION PURSUANT TO
)	FRCP RULE 23 AND FLSA § 216(b)]
Plaintiff,)	
vs.)	FIRST AMENDED COMPLAINT
)	FOR DAMAGES; DEMAND FOR
HUB ENTERPRISES, INC., a)	JURY TRIAL
Louisiana corporation; and DOES 1)	
through 10, inclusive,)	
)	
Defendants.)	

JURISDICTION

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(3) as the controversy arises under “constitution, laws or treaties of the United States; specifically, the claim arises under the Fair

1 Labor Standards Act of 1938, 29 U.S.C. §§ 201 *et seq.*, (“FLSA”). Additionally,
2 this Court has the authority to determine Plaintiff’s state claims pursuant to its
3 supplemental jurisdiction under 28 U.S.C. § 1367.

4 VENUE

5 2. Venue is proper in the Eastern District of New York pursuant to 28
6 U.S.C. § 1391(b) because a substantial part of the acts, events, or omissions giving
7 rise to the action occurred in this District and Plaintiff and Defendant each
8 reside/operate businesses within this district.

9 PARTIES

10 3. Individual and representative Plaintiff, Richard J. Curasi (hereinafter
11 “CURASI” or “Plaintiff”), is a resident of Nassau County, in the State of New
12 York. He was employed by Defendant Hub Enterprises, Inc. (hereafter “HEI” or
13 Defendant) as an Investigator from approximately April 2010 through
14 approximately October 2010. Plaintiff brings his claims on behalf of the national
15 collective and New York classes, as set forth below.

16 4. Plaintiff is informed and believes, and thereon alleges, that Defendant
17 Hub Enterprises, Inc. (hereafter “HEI” or Defendant) was and is a Louisiana
18 corporation doing business under and by virtue of the laws of the State of New
19 York, providing investigative services to consumers throughout the United States.

20 5. Each of the DOES 1 through 10, inclusive, is so named because
21 Plaintiff does not know their true names and/or capacities at this time. Plaintiff
22 will seek leave of Court to amend this Complaint when the true names and
23 capacities of the defendants designated herein as DOES 1 through 10 have been
24 ascertained.

25 6. Plaintiff is informed and believes, and on the basis of such
26 information and belief, alleges that each defendant was an agent, employee,
27 partner, and/or alter ego of each of the other remaining defendants, and in doing
28 the things herein alleged were acting within the scope and course of such agency

1 and/or employment. Upon information and belief, each of the fictitiously named
2 defendants are responsible in some manner for the occurrences herein alleged, and
3 Plaintiff's injuries as herein alleged, as well as the injuries of the putative class,
4 were proximately caused by such defendants.

5 7. The defendants, and each of them, save and except Defendant HEI,
6 which is sued as an entity, are sued in their individual and official capacities.

7 8. The acts of defendants were in accordance with, and represent the
8 official policy of, HEI or those whose edicts or acts may fairly be said to represent
9 official policies hereinafter set forth.

10 9. Each defendant herein willfully committed, ordered, directed,
11 supervised, allowed, planned, ratified, concealed, organized or otherwise
12 participated in the unlawful acts complained of herein.

13 **COLLECTIVE AND CLASS ACTION ALLEGATIONS**

14 10. This is a collective and class action, pursuant to FLSA, 29 U.S.C. §
15 216(b) and Federal Rule of Civil Procedure ("FRCP"), Rule 23, brought by
16 individual and representative Plaintiff CURASI, on behalf of himself and all others
17 similarly situated, as defined below, against their former/current employer,
18 Defendant HEI. Plaintiff, putative collective action members and putative class
19 members (all putative members hereinafter referred to collectively as "Class
20 Members") seek recovery for violations of state and federal overtime provisions, as
21 well as all other applicable damages and penalties legally recoverable, as a result
22 of Defendant's actions in requiring Plaintiff and Class Members to work more than
23 forty (40) hours per week without proper overtime compensation. Plaintiff and
24 Class Members were/are employed by Defendant HEI as "Investigators." All such
25 employees are similarly situated under the Fair Labor Standards Action ("FLSA"),
26 29 U.S.C. § 216(b), and Federal Rule of Civil Procedure ("FRCP"), Rule 23.

27 ////

1 11. This action is brought under the FLSA applicable New York state law
2 to recover from Defendant unpaid overtime compensation, liquidated damages, and
3 applicable penalties.

4 **COLLECTIVE ACTION**

5 12. Plaintiff brings the collective action, pursuant to 29 U.S.C. § 216(b),
6 on behalf of himself and all other similarly situated current and former employees
7 that worked for Defendant as “Investigators,” or in a substantially similar position
8 under a different title, who were not paid overtime compensation for all of their
9 overtime hours worked within the three-year period prior to the filing of this
10 Complaint through the final disposition of this action (“Collective Class”).

11 13. Plaintiff is informed and believes, and thereon alleges, that Defendant
12 knew, or should have known, that Plaintiff and the Collective Class were working
13 overtime without proper compensation. Defendant’s unlawful conduct was
14 widespread and consistent. Defendant knowingly and repeatedly accepted the
15 benefits of the labor performed by Plaintiff and Class Members, but failed and
16 refused to compensate for all such additional hours worked. The failure to pay
17 overtime for all of the overtime hours worked by Class Members was a company
18 policy, ratified and condoned by management.

19 14. Defendant’s failure to properly compensate Plaintiff and the
20 Collective Class is a violation of the FLSA, and thus, a notice should be sent to all
21 persons similarly situated. Those persons similarly situated are current and former
22 employees of Defendant, and thus, are known to Defendant and readily
23 identifiable.

24 **CLASS ACTION ALLEGATIONS**

25 15. Plaintiff brings this action as a class action pursuant to FRCP Rule 23
26 on behalf of all current and former employees that worked for Defendant as
27 “Investigators,” or in a substantially similar position under a different title, within
28 the state of New York and who were not paid overtime compensation for all of

1 their overtime hours worked within the six-year period prior to the filing of this
2 Complaint through the final disposition of this action (“New York Class”).

3 16. Defendant’s failure to pay Plaintiff and New York Class Members all
4 of their overtime compensation for overtime hours worked violates NYLL Article
5 6, §§ 190, *et seq.* and Article 19, §§ 650 *et seq.*, and supporting New York state
6 Department of Labor regulations.

7 17. There is a well defined community of interest in the litigation and the
8 class is easily ascertainable:

9 a. Numerosity: Plaintiff is informed and believes, and thereon alleges, that
10 the proposed New York Class is so numerous as to make joinder impracticable.
11 Plaintiff is informed and believes, and thereon alleges, that the total number of
12 putative class members, as defined above, exceeds 50 and that such persons are
13 located in all parts of the state of New York and throughout the various United
14 States.

15 b. Common questions predominate: This action is maintainable by Plaintiff
16 under Rule 23(b)(3) as a class action because the questions of law and fact
17 common to the class predominate over any questions affecting individual members
18 and, on balance, a class action is superior to other methods available for
19 adjudicating the controversy. The rights which are the subject of this action are
20 common to all New York Class Members who worked for Defendant within New
21 York, and Plaintiff’s claims, as hereinafter set forth, are typical of the claims of all
22 Class Members including, but not limited to:

23 i) Whether Defendant failed to properly compensate Plaintiff and
24 New York Class Members for all of their overtime hours worked in violation of the
25 New York state wage and hour laws, as alleged herein;

26 ii) Whether Defendant failed to properly record and keep adequate
27 records of all of the hours worked by Plaintiff and New York Class Members;

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1 iii) Whether Defendant failed to compensate the New York Class
2 for all worked Defendant required and permitted them to perform;

3 iv) Whether Defendant has engaged in a pattern, practice or policy
4 of directing and/or discouraging the New York Class Members from reporting all
5 of their time worked; and

6 v) Whether, when Defendant did pay overtime compensation to
7 Plaintiff and the New York Class, it failed to pay such wages at the rate required
8 by New York state law.

9 c. Typicality: Plaintiff's claims, as well as Defendant's defenses to such
10 claims, are typical of the claims and defenses of the putative class. Plaintiff and
11 New York Class Members all sustained damages arising out of Defendant's
12 common practices of requiring "Investigators," and other employees who worked
13 in a substantially similar position under a different title, to work hours and
14 overtime hours without proper compensation and failing to record these additional
15 hours worked. Plaintiff has the same, or substantially similar, duties and job
16 responsibilities as Class Members, which primarily involve investigation and
17 surveillance.

18 d. Adequacy: Plaintiff is an adequate representative of the class in that
19 his claims are typical of each class member and he has no interest antagonistic to
20 or in conflict with the interests of other New York Class Members. Plaintiff is
21 qualified to, and will, fairly and adequately protect the interests of each class
22 member. Moreover, to represent his interests and the interests of the proposed
23 class, Plaintiff has retained counsel experienced in nationwide, and statewide,
24 wage and hour collective and class action litigation.

25 e. Superiority: Class action adjudication is superior to other available
26 methods because a class action will achieve economies of time, effort, and expense
27 as compared to separate lawsuits, and avoid inconsistent outcomes, because the
28 same issues can be adjudicated in the same manner for the entire class. Plaintiff is

1 currently unaware of any pending litigation commenced by any other class member
2 involving the same issues in this Complaint. Further, it is desirable to concentrate
3 the litigation of such claims in this forum, and there are no difficulties likely to be
4 encountered in the management of the class action.

5 f. Public Policy Consideration: Employers throughout the state violate
6 wage and hour laws every day. Current employees are often afraid to assert their
7 rights out of fear of direct or indirect retaliation. Former employees are fearful of
8 bringing actions because they perceive that their former employers can damage
9 their future endeavors through negative references and other means. Class actions
10 provide the Class Members who are not named in the complaint with a type of
11 anonymity that allows for the vindication of their rights.

12 18. This action is also maintainable as a class because filing separate
13 actions may result in varying or contradictory adjudications, thus establishing
14 incompatible standards of conduct for Defendant. Further, Plaintiff is informed
15 and believes, and thereon alleges, that Defendant acted, or failed to act, on grounds
16 that generally affected the entire class as a whole. Moreover, the damages suffered
17 by individual class members are small by comparison to the cost and expense of
18 individual prosecution of the action. Filing as a class will also obviate the need for
19 duplicative litigation, and thus, is the most efficient and cost effective means by
20 which to adjudicate these claims.

21 19. Plaintiff requests that absent class members be notified by the best
22 notice practicable under the circumstances, including individual notice to all
23 members who can be identified through reasonable effort.

24 **STATEMENT OF FACTS**

25 20. At all times herein set forth, Defendant was an employer within the
26 definition of the FLSA and New York State Law, and Plaintiff was at all times
27 herein set forth an employee of Defendant within the definition of the FLSA and
28 New York State Law.

1 21. Plaintiff is informed and believes, and thereon alleges, that at all times
2 set forth herein, Defendant's annual gross volume of sales made or business done
3 is not less than \$500,000.

4 22. As set forth above, Defendant employed Plaintiff in the capacity of
5 "Investigator" during the relevant statutory periods. Plaintiff was employed within
6 the state of New York, and was paid an hourly rate of pay. Plaintiff's job duties
7 primarily involved the investigation and surveillance of individuals, and the
8 preparation of written reports and updates.

9 23. Throughout his employment with Defendant, Plaintiff was frequently
10 required to work off-the-clock without compensation. The number of hours that
11 Plaintiff worked per week varied. However, Plaintiff estimates that he worked an
12 average of six (6) days per week and consistently worked far more than forty (40)
13 hours per week. In addition to the hours that were recorded on Defendant's
14 payroll records and timesheets, which typically exceeded forty (40) hours per
15 week, Plaintiff was also required to work numerous hours "off the clock" without
16 compensation in order to complete his assigned job duties. Plaintiff was required
17 to prepare a report for each surveillance assignment. However, Plaintiff's
18 supervisor, Lee Carrier, often refused to pay Plaintiff for all of the time he
19 expended preparing the reports. Plaintiff also submitted time for the work he
20 performed in preparing for a surveillance assignment, but his supervisor, Lee
21 Carrier, frequently refused to compensate Plaintiff for this time as well. Plaintiff
22 estimates that he worked approximately one (1) hour per work shift preparing for a
23 surveillance assignment and one (1) to two (2) hours per shift reviewing video tape
24 and preparing reports without compensation. Finally, on those occasions that
25 Defendant recorded more than forty (40) hours per week, Plaintiff was not
26 compensated at the rate of one and one-half his hourly rate of pay for the hours
27 worked over forty (40) in a week, but rather was paid only straight time for his
28 overtime hours worked.

24. Defendant knew or should have known that Plaintiff worked overtime without full compensation in that Defendant, or its agents, officers and employees, required Plaintiff to work such overtime hours and were responsible for establishing the policies that prohibited Plaintiff, and the other Class Members, from receiving compensation for all of their hours worked. Defendant maintained a pervasive and widespread system whereby Plaintiff and Class Members were not paid for all of the time they expended preparing reports and updates, as well as the time expended preparing for their surveillance assignments. Defendant knew or should have known that Plaintiff and Class Members were not compensated for all their time worked because Defendant either specifically refused to pay for such hours worked or discouraged Class Members from reporting all of their time. In short, Defendant sat idly by and knowingly accepted the benefits of Plaintiff's labor, and the labor of Class Members, without providing lawful compensation. Finally, on those occasions that Defendant paid overtime compensation, Plaintiff was paid only his regular rate and not one and one-half times his regular rate of pay, as required under federal and state law.

25. Plaintiff is informed and believes, and thereon alleges, that at all times set forth herein, Defendant was advised by skilled lawyers and other professionals, employees and advisors knowledgeable about the FLSA and New York overtime and wage laws. Plaintiff is further informed and believes, and thereon alleges, that at all times relevant to this Complaint Defendant knew or should have known that Plaintiff and other "Investigators" were not being properly compensated for all of their overtime hours worked under either New York or federal law.

FIRST CAUSE OF ACTION

FOR WILLFUL VIOLATION OF 29 U.S.C. § 207

(Against All Defendants)

26. Plaintiff reasserts and realleges paragraphs 1 through 25, inclusive, as though fully set forth and incorporates said paragraphs herein by reference.

1 27. Defendant has either recklessly or knowingly and intentionally failed
2 to compensate Plaintiff and Class Members at the rate of time and one-half for all
3 of their overtime hours worked.

4 28. As set forth more fully above, Plaintiff worked more than forty (40)
5 hours per week without receiving all of his overtime compensation as required
6 under the FLSA.

7 29. Although Defendant was apprized of the law regarding the payment of
8 hours covered by the FLSA, Defendant failed to pay Plaintiff and Class Members
9 for all of their actual hours worked.

10 30. Defendant maintained a pervasive and widespread system whereby
11 Plaintiff and Class Members were not paid for all of the time they expended
12 preparing reports and preparing for their surveillance assignments. Defendant
13 knew or should have known that Plaintiff and Class Members were not
14 compensated for all the time worked preparing reports and preparing for their
15 surveillance assignments because Defendant either flatly refused to pay for such
16 time when submitted by Plaintiff and Class Members or actively discouraged Class
17 Members from reporting all of their hours worked. Defendant failed to properly
18 record all of Plaintiff's and Class Members' hours worked.

19 31. In doing all the things described and alleged in this Complaint,
20 Defendant deprived Plaintiff and Class Members of the rights secured to them
21 under federal law, which clearly sets forth that such employees are entitled to
22 compensation at the rate of one and one-half their regular rate of compensation
23 for all hours worked in excess of forty (40) hours in a workweek.

24 32. In failing to compensate Plaintiff and Class Members for all their
25 overtime hours worked, Defendant has also failed to keep and preserve sufficient
26 records to accurately determine Plaintiff and Class Members' lawful
27 compensation, as required by the FLSA.

33. Defendant willfully, in bad faith and/or with a reckless disregard for Plaintiff's and Class Members' rights under the law, failed to compensate Plaintiff and Class Members for all of their overtime hours worked.

34. As a direct and proximate result of Defendant's actions and inactions, Plaintiff and Class Members have been damaged and are entitled to compensatory and/or liquidated damages in an amount according to proof at trial including, but not limited to, a sum equivalent to their unpaid overtime compensation and an equal amount for liquidated damages, according to proof, for the three (3) years preceding the filing of this Complaint as required under 29 U.S.C. § 216(b), attorney fees, and costs, as well as any other equitable relief that the Court deem just and proper. Plaintiff, on behalf of himself and the Collective Class, seek recovery of all the aforementioned damages.

SECOND CAUSE OF ACTION

VIOLATION OF NEW YORK LAW: UNPAID WAGES

(Against All Defendants)

35. Plaintiff reasserts and realleges paragraphs 1 through 34, inclusive, as if fully set forth, and incorporates said paragraphs herein by reference.

36. The Defendant's failure to pay Plaintiff and New Class Members for all of their hours worked by requiring or permitting them to perform uncompensated work off-the-clock violates NYLL Article 6, §§ 190, *et seq.* and Article 19, §§ 650 *et seq.*, and supporting New York state Department of Labor regulations.

37. Due to Defendant's violations of NYLL, Plaintiff and New York Class Members are entitled to recover from Defendants their unpaid wages, reasonable attorney fees, and the costs of the action, pursuant to NYLL Article 6, §§ 190, *et seq.* and Article 19, §§ 650 *et seq.*, and supporting New York state Department of Labor regulations.

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1 **THIRD CAUSE OF ACTION**

2 **VIOLATION OF NEW YORK LAW: UNPAID OVERTIME WAGES**

3 **(Against All Defendants)**

4 38. Plaintiff reasserts and realleges paragraphs 1 through 37, inclusive, as
5 if fully set forth, and incorporates said paragraphs herein by reference.

6 39. The Defendant's failure to pay Plaintiff and New Class Members the
7 premium rate of one and one-half their regular rate of pay for each hour worked for
8 in excess of forty (40) hours in a work week violates NYLL Article 6, §§ 190, *et*
9 *seq.* and Article 19, §§ 650 *et seq.*, and supporting New York state Department of
10 Labor regulations.

11 40. Due to Defendant's violations of NYLL, Plaintiff and New York Class
12 Members are entitled to recover from Defendants their unpaid overtime wages of
13 not less than one and one-half their regular rate of pay for each hour worked in
14 excess of forty (40) hours in a workweek, reasonable attorney fees, and the costs of
15 the action, pursuant to NYLL Article 6, §§ 190, *et seq.* and Article 19, §§ 650 *et*
16 *seq.*, and supporting New York state Department of Labor regulations.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff and Class Members pray for relief and judgment
19 against Defendants, jointly and severally, as follows:

20 **Class Certification**

21 1. That this action be certified as a class action, pursuant to FRCP, Rule
22 23;

23 2. That this action be certified as a Collective Action, pursuant to 29
24 U.S.C. § 216(b).

25 3. That Plaintiff be appointed as the representative of each Class; and

26 4. That counsel of record for Plaintiff be appointed as Class Counsel for
27 each Class.

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As to the First Cause of Action

1. For general unpaid wages at applicable overtime rates, and any other actual, consequential, liquidated and incidental losses and damages, according to proof at trial;

2. Such other damages as may be allowed in accordance with the Federal Rules of Civil Procedure, Rule 54(c), and 29 U.S.C. 216(b), according to proof;

3. Liquidated damages, attorney fees, and costs pursuant to 29 U.S.C. 216(b); and

4. Any other relief, including equitable relief, as the Court may deem just and proper.

As to the Second and Third Causes of Action

1. For general unpaid regular wage and overtime wages, reasonable attorney fees, and the costs of the action, pursuant to NYLL Article 6, §§ 190, *et seq.* and Article 19, §§ 650 *et seq.*, and supporting New York state Department of Labor regulations;

2. For pre-judgment interest on any unpaid compensation due from the day such amounts were due;

3. For reasonable attorney's fees and costs of suit herein; and

4. For such other and further relief as the Court may deem appropriate.

DATED: August 10, 2011 DEASON & ARCHBOLD

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By: s/ David D. Deason

David D. Deason
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as provided by Rule 38 of the Federal Rules of Civil Procedure.

DATED: August 10, 2011

DEASON & ARCHBOLD

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Newport Beach, CA 92660

Telephone: (949) 794-9560

By: s/ David D. Deason

David D. Deason

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of August, 2011, the foregoing document was filed with the Court Clerk and served in accordance with the Federal Rules of Civil Procedure, and/or the Eastern District Local Rules, and/or the Eastern District Rules for Electronic Service upon the following parties or participants

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DATED: August 10, 2011

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